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**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1888.**

**No. 511**

**THE PUEBLO OF SANTA ROSA, PETITIONER,**

**VS.**

**ALBERT B. FALL, SECRETARY OF THE INTERIOR, AND  
WILLIAM SPEY, COMMISSIONER OF THE GENERAL  
LAND OFFICE, RESPONDENTS.**

**PETITION FOR WRIT OF HABEAS CORPUS TO THE  
COURT OF APPEALS OF THE DISTRICT  
OF COLUMBIA AND BRIEF IN SUPPORT  
THEREOF.**

**HUDSON P. HIBBARD,  
LOUIS KLEINDIENST,  
W. C. MEED,**

*Counsel for Petitioner.*

**LEVI H. DAVID,**

*Of Counsel.*

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THE PUEBLO OF SANTA ROSA, PETITIONER,

*vs.*

ALBERT B. FALL, SECRETARY OF THE INTERIOR, AND  
WILLIAM SPRY, COMMISSIONER OF THE GENERAL  
LAND OFFICE, RESPONDENTS.

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**PETITION FOR WRIT OF CERTIORARI TO THE  
COURT OF APPEALS OF THE DISTRICT  
OF COLUMBIA.**

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*To the Honorable the Chief Justice and Associate  
Justices of the Supreme Court of the United States:*

Your petitioner, the Pueblo of Santa Rosa, respectfully petitions this Honorable Court to grant its writ of certiorari to the Court of Appeals of the District of Columbia and to remove therefrom to this Court for review the record in the case, there lately pending,

entitled *The Pueblo of Santa Rosa*, appellant therein, being petitioner herein, *v.* Albert B. Fall, Secretary of the Interior, and William Spry, Commissioner of the General Land Office, appellees therein and respondents herein, said cause being No. 4298 on the docket of the said Court of Appeals.

The decree of the Court of Appeals of the District of Columbia was entered on April 5, 1926, affirming the decree of the Supreme Court of the District of Columbia, dismissing petitioner's (plaintiff's) bill of complaint (Rec., 431). On April 24, 1926, the Court of Appeals denied (Rec., 441) the application (Rec., 431-440) of the petitioner for rehearing and modification of the decree of the said Court of Appeals.

The opinion of the Court of Appeals is set forth in the transcript of record at pages 423-430. The opinion of the court is also reported in 54 *Washington Law Reporter*, 242-244.

A duly certified copy of the entire record of said cause is herewith presented.

### **The Matter Involved.**

The treaty rights of some 6,000 Papago Indians to about 2,146,000 acres of desert land are now involved directly and indirectly in this case, as the Pueblo of Santa Rosa, situate within the Gadsden Purchase, is but one of 18 similar villages of Papago Indians.

The case has been in this Court before, and an opinion was written therein by Mr. Justice Van Devanter (*Lane, etc., v. Pueblo of Santa Rosa*, 249 U. S., 110, 114).

The case in the court below was a suit by petitioner praying for an injunction against the respondents and their successors in office to prevent encroachments upon petitioner's lands (Rec., 9).

The bill of complaint was filed in the Supreme Court of the District of Columbia on January 28, 1915 (Rec., 1-10), to which the respondents' predecessors filed a motion to dismiss (Rec., 11-12). The court of first instance granted said motion to dismiss (Rec., 22), whereupon petitioner appealed to the District Court of Appeals, in which court counsel for respondents, in open court, announced that a final decree might be entered, inasmuch as defendant did not desire to answer or plead further in the case below (Opinion, Court of Appeals, Rec., 425).

The Court of Appeals of the District of Columbia reversed the decree of the Supreme Court of the District and remanded the cause, with direction to enter a decree in favor of petitioner (plaintiff), which decision is reported and entitled *Pueblo of Santa Rosa v. Franklin K. Lane et al.*, 46 App. D. C., 411; 47 *Washington Law Reporter*, 374.

The respondents appealed from this decision to the Supreme Court of the United States and insisted that an opportunity be allowed to answer the bill in the court of first instance. This Court reversed both the decrees of the Court of Appeals of the District of Columbia and the Supreme Court of the District of Columbia and directed the latter court to proceed with the case not inconsistent with the opinion of this Court (249 U. S., 110-114).

The opinion of this Court, written by Mr. Justice Van Devanter, contains the following language (page 114):

"In view of the very broad allegations of the bill, the accuracy of which has not been challenged as yet, we have assumed, in what has been said, that the plaintiff's claim was valid in its entirety under the Spanish and Mexican laws, and that it encounters no obstacle in the concluding provision of the Sixth Article of the Gadsden Treaty, but no decision on either point is intended. Both involve questions not covered by the briefs or the discussion at the bar, and are left open to investigation and decision in the further progress of the cause."

The case was remanded with instructions to the court below to allow the respondents an opportunity to answer the bill. The respondents thereupon, on June 9, 1919, presented to the Supreme Court of the District of Columbia another motion to dismiss upon the following grounds (Rec., 33-87):

1. Lack of authority of counsel to represent the petitioner.
2. That petitioner had no capacity to sue.
3. That there is not such a thing as Pueblo of San Rosa.
4. The lands were ceded to the United States under the Gadsden Treaty.
5. That the bill seeks to control the discretionary powers of respondents.

The respondents also filed, on June 9, 1919, their answer to the merits and, besides denying the allegations of the bill of complaint, offered as defenses (Rec., 22-33):

1. That the Government has spent money constructing wells, buildings, a hospital and fences, and that all the inhabitants of the region upon which petitioners live are under the control and supervision of the Papago U. S. Indian Agency located at Sells, Arizona.

2. That the inhabitants of petitioner never had title to the lands involved under the laws of Spain or Mexico, except the ordinary Indian right of occupancy.

3. That an Indian reservation has been created by executive order declaring the lands involved herein to be a part thereof.

4. That no grant emanating from the government of Spain or Mexico was ever made to any village or community of Papago Indians in the Santa Rosa region, or to any Papago Indians, or located or recorded in the archives of Mexico, as is provided in Article VI of the so-called Gadsden Treaty; that all of the lands in controversy herein, when acquired from Mexico, passed under the dominion of the United States as public lands of the United States; that no right, title, or interest exists, or ever existed, in any Papago Indian or community of Indians in or to any of the lands in controversy herein other than the ordinary Indian right of occupancy and possession, subject to the sovereign rights of the United States.

The cause was heard on final hearing by the trial court, the Supreme Court of the District of Columbia, as set forth in its decree, upon the pleadings, evidence, and exhibits, "and also upon the motion of the defendants [respondents], accompanied by exhibits and affidavits, filed herein June 9, 1919, to dismiss the bill of complaint" (Rec., 100), and thereupon the trial court entered its decree (Rec., 100) October 3, 1924, and by the first paragraph thereof the said motion to dismiss of the respondents, dated June 9, 1919, is overruled, and by the second paragraph thereof (Rec., 100) the bill of complaint of the petitioner (plaintiff) is finally dismissed, with costs against petitioner (Rec., 100). The respondents (defendants in trial court) took no appeal therefrom.

The petitioner appealed to the Court of Appeals from the second paragraph of said decree, dismissing its bill of complaint (Rec., 111).

The Court of Appeals of the District of Columbia in the course of its opinion (Rec., 428) held that the motion of June 9, 1919, of the respondents to dismiss the bill was "not only improperly injected into the present case, but it came too late," and decided the case on its merits (Rec., 428-430). The court decided that while the lands involved were the property of petitioner under the laws of Spain and Mexico (Rec., 429), yet nevertheless the court held that the concluding clause of Article VI of the Gadsden Treaty (Rec., 429) forbids relief by the courts (Rec., 430). The court further held that "the power lies alone in Congress to extend to these people protection similar to that

thrown around the Pueblos of New Mexico, who were more fortunate than plaintiff, merely in that they possessed a paper title from Mexico'' (Rec., 430). The decree dismissing the bill was affirmed (Rec., 430).

### **Reasons for Allowance of the Writ.**

The Court of Appeals, in holding that the concluding clause of Article VI of the Gadsden Treaty forbids relief to petitioner by the Court and denying petitioner relief, has decided a Federal question of substance not heretofore determined by this Court. The decision of the Court of Appeals of the District of Columbia has construed a treaty between the United States and the Republic of Mexico in a manner adverse to petitioner's rights, which also involves the construction of a treaty not heretofore determined by this Court.

WHEREFORE your petitioner prays that the writ of this Honorable Court may be issued as petitioned herein.

HUDSON P. HIBBARD,  
LOUIS KLEINDIENST,  
W. C. REID,  
*Counsel for Petitioner.*

LEVI H. DAVID,  
*Of Counsel.*

## **SUPPORTING BRIEF.**

The opinion of the court below, the Court of Appeals of the District of Columbia, is reported in 54 *Washington Law Reporter*, 242, and is also set forth in the Transcript of Record at pages 423-430.

### **I.**

#### **This Court Has Jurisdiction.**

The specific claims advanced and relied upon as a basis for jurisdiction have been set out in full in the petition under the heading "Reasons for allowing the writ," to wit, that the holding of the Court of Appeals that the concluding clause of Article VI of the Gadsden Treaty forbids relief to the petitioner by the court, and denying that relief, the said Court of Appeals has decided a Federal question of substance not heretofore determined by this Court, and that the decision of the said Court of Appeals has construed a treaty between the United States and the Republic of Mexico in a manner adverse to the rights of petitioner, which decision also involves the construction of a treaty between the United States and a foreign power not heretofore determined by this Court.

## II.

**The Property Rights of Petitioner Were Not Acquired by "Grant," But Were Recognized By The Laws and Decrees of Spain, As Well As Having Been Established By Prescription.**

It is contended by petitioner that the concluding clause of Article VI of the Gadsden Treaty (10 Stat. at L., p. 1031) does not in any sense affect it. Such Article applies to instances where a grant has been specifically made, evidenced by a paper title, and the requirement of Article VI was such that this paper title must have been recorded prior to September 25, 1853. Such Article could not have applied to a property right which, in its very nature, could not have been recorded. A prescriptive right is of such nature that there could be no paper title, and, therefore, no record in the archives of such right.

The Papago Indians never had a grant of land. They were never "reduced" and placed in villages, as was the custom of Spain, with scattered tribes. These people are not asking for a foot more land than they had and occupied at the date the first white man set foot in their country. They asked nothing of Spain, because they possessed these very lands long before Spain knew the New World existed, and Spain recognized their rights to these lands as superior to the right of itself. With such relation existing between the Pueblo Indians and Spain, "grants" of lands from Spain to the Pueblos of lands possessed and occupied

by them prior to the Spanish discovery would have been an anomaly. The Pueblos might have granted their lands to Spain, but certainly Spain could not have granted these lands to the Papago Indians. At best, it was a concession, and the word "concession" is used by the decrees found in the laws of the Indies quite frequently.

This subject should be approached by the Court from an entirely different angle which the Court would approach the matter of rights of Indians of the eastern States who happen to have fallen subject to a power which based its rights upon conquest. Spain's idea was to Christianize the people of the newly discovered land, and the Spanish Crown took its source of title from the Papal Bull "Noverint Universi" of May 4, 1493, which is as follows:

"Whereas, you intend diligently, and with special effort, to subject, assisted by the divine clemency, all the aforesaid islands and mainland, and you propose to submit their inhabitants and settlers to the Catholic faith (as befits Catholic kings and princes), according to the customs of the Kings, your ancestors of illustrious memory, we, therefore, desirous that such an end be pursued, and that the name of our Savior be known in those parts, exhort you, in the name of God, and by the sacred baptism, as far as you are bound by the apostolic mandates, and, by the clemency of our Lord Jesus Christ, we attentively request you to undertake and pursue, with due diligence and the zeal of the orthodox faith, as you wish and you ought, to induce the people of those is-

lands and lands to accept the Christian Religion, so that neither danger nor difficulties shall deter you from your firm hope and confidence that Almighty God will assist you to successfully carry through your purpose. And as you audaciously undertake such an important matter, we, of our own volition, with apostolic liberality, not because you or anybody, in your behalf, have made any instance or demand upon us, but merely as a gift, with full knowledge and the plenitude of the apostolic power, grant you all islands and mainlands which have been, or will be, in the future, discovered westward of a meridian drawn and based on a line from the North Pole, that is to say, from the Septentrion to the South Pole, that is to say, the meridian, whether they be mainlands or islands which have been or will be discovered, whether they are towards the Indies or towards any other part whatever. The said line shall be distant from any of the islands commonly called the Azores or the Cape Verde Islands, 100 leagues towards the west and south."

Pursuant to the above, one of the first expressions of the policy of Spain and its attitude towards the property rights of the natives of the New World is found in the will of the Catholic Queen Isabel. The clause concerning the instruction and treatment of the Indians contained in this will and found in the Laws of the Indies, Book 6, Title 10, Law 1, is as follows:

"When the islands, and mainland of the oceanic sea, already discovered and to be discovered, were granted to us by the Holy See, our

principal intention was, at the time we requested this of Pope Alexander Sixth of great memory, that he should make us the said concession that we might procure, induce and attract their peoples and convert them to our holy Catholic faith and send to the islands and mainlands, prelates, priests, clergy, and other learned and God-fearing persons to instruct the natives and dwellers there in the Catholic faith and teach and educate them in good customs, and to use in that regard due diligence, as is more fully set forth in the letters of said concession. I asked the King, my lord, very affectionately, and I charge and order the Princess, my daughter, and the Prince, her husband, that they shall do and fulfill this, and that this shall be their principal purpose, and that they shall use much diligence in that regard; and that they shall not consent or permit that the natives, Indians and dwellers of said islands and mainlands, conquered or to be conquered, shall receive any injury in their persons or *property*; but they shall order that these shall be well and justly treated, and if they have suffered any injury it should be remedied, and shall provide so that nothing enjoined upon or ordered by us in the apostolic letters of such concession shall be violated in any way.' And we, emulating her Catholic and pious zeal, order and direct the Viceroy, Presidents, Audiencias, Governors and Royal Justices, and we charge the Archbishops, Bishops and Ecclesiastical Prelates that they keep this clause in mind and keep its provisions by laws; that, in order to convert the natives, instruction in Christian and Catholic doctrine, and good treatment shall be given."

Concerning the prescriptive right and the time necessary to acquire by prescription, we quote an extract from the Novisima Recopilacion de las Leyes de España, Book 9, Title 8, Law 4, of Philip Second, 1566, as follows:

“Because certain persons in our kingdom have and possess certain cities, villas and places and civil and criminal jurisdictions without having any instrument of title from us, nor from the Kings, our ancestors, and there has been some doubt whether the above can be acquired against us and our crown by any lapse of time WE ORDER AND DIRECT that immemorial possession, being proved in accordance with, and as and under the conditions which the law of Toro requires, (which is Law 1, Title 17, Book 10) is sufficient to acquire against us and our successors any cities, villas and places, and civil and criminal jurisdictions whatever, or any part thereof, with the rights annexed and belonging to the Lordships and jurisdictions; provided that said time of said prescription shall not be interrupted nor taken by us or by our orders, or by any other persons in our name, whether naturally or civilly; as to the supreme civil or criminal jurisdiction which the Kings have by royal power and superiority, which is that of doing whatever the other judges fail to do, we declare that this latter cannot be gained or acquired by prescription by said time nor by any other time; and also that which the laws say ‘that the rights of the Kingdom cannot be gained by time’ must be understood in regard to the duties and tributes due to us.”

The attitude of the government of Spain toward the Indians and their property rights is also shown by the Laws of the Indies, Book 4, Title 12, Law 18, March 16, 1642, as follows:

“We order that the sale, cultivation and adjustment of lands shall be made with such precaution that to the Indians shall be left, with the utmost liberality, all the lands in which may belong to them, not only as individuals, but also as communities, and the waters and streams in the lands which may have been made aqueducts, or any other improvements by which the lands have been fertilized by their personal industry; these shall be reserved in the first place, and in no case shall they be sold or alienated; and the Judges which may be sent shall satisfy the Indians which are found upon the lands and shall leave the lands to each one of the old tributaries, reservados and Indian headmen, governors, absent ones and communities.”

And in Book 4, Title 12, Law 14, Philip Second, November 20, 1578:

“Because we have wholly succeeded to the Lordship of the Indies, and because the public lands not granted away by the Kings, our predecessors, or by us, belong to our patrimony and royal crown, it is suitable that all the land which is held in possession without just and true title shall be restored to us, as it belongs to us, so that, reserving before everything that which to us, or our Viceroy, Courts, or Governors, may appear necessary for the plazas, commons valdios, pastures and territory of the inhabited

villages and towns, in view of their present condition, as well as of the future, and their possible expansion, and granting to the Indians that of which they may reasonably have need for working the land and making their crops and raising cattle, confirming them in that which they now have, and giving to them, in addition, that which is necessary, all the rest of the lands may remain and be free and unincumbered, to be disposed of according to our will. Wherefore we order and direct the Viceroys and Presidents of the pretorial courts that when it appears proper to them, they shall announce a suitable limit of time in order that those in possession may exhibit before them and the officers of their courts, which may name the titles of the lands, plantations, farms, stock farms, protecting those who are in possession with good title and guarantees or with just prescription, and they shall return and restore to us the remaining land to be disposed of according to our will."

And in Book 4, Title 12, Law 9, June 11, 1594:

"We order that the farms and lands which may be given to Spaniards shall be without prejudice to the Indians, and that those given to their prejudice and injury shall be returned to those to whom they may, in right, belong."

And in Book 4, Title 12, Law 12, March 24 and May 2, 1550:

"Because the farms of cattle, mares, hogs and other large and small cattle do great damage in the cornfields of the Indians, and espe-

cially the cattle which go at a distance and without guard; we order that no stock farms shall be granted in sections and places where injury can result, and where injury cannot be avoided, that they shall be far from the pueblos of Indians and their plantations, because for cattle there are distant lands and grass where they may be pastured and grazed without injury, and the justices shall cause the owners of cattle and those interested in the public welfare shall place whatever herdsmen and guards as may be sufficient to avoid damage, and in case that any happens, they shall make satisfaction for it."

And in Book XI, Title 8, Law 4, 1566, *Novísima Recopilacion de las Leyes de Espana*, it is said that immemorial possession properly proved under the conditions of Book 10, Title 17, Law 1, "is sufficient to acquire against us and our successors any cities, villas and places and civil and criminal jurisdictions whatever, or any part thereof, with the rights annexed and belonging to the Lordship and jurisdiction," but excepts duties and tributes from being acquired by prescription, thus showing that, except as to duties and tributes, the law of prescription was early recognized.

And Book 4, Title 12, Law 19, 1594, wherein it is directed that land given to Spaniards shall be given without prejudice to the Indians; that those given to their prejudice or injury shall be returned to those to whom they belong.

From the above Laws of the Indies, it is clearly shown: (1) That towns and villages could take and hold real property as Indies, and (2) that whatever lands the Indians then had were confirmed to them, and (3) that the King made it mandatory on the officials to grant to the Indians whatever more they might need from public lands; and (4) show that the Indians' lands were respected, and that even the governmental grant to Spaniards of Indian land was void.

We also submit that when lands of the Indians are mentioned, it means Indian communities, because the usual Indian lands and tenures were by communities.

### III.

#### **The Right Of The Indians To Their Lands Without Written Titles Was Recognized In Mexico As Well As In Spain.**

Pallares Legislacion Federal Complementaria del Derecho Civil Mexicano (Mexico, 1897), conceded by the Government to be a book of authority so far as Pallares Commentary is concerned, says, at pages 26 and 27 of the commentary:

"It has been believed by companies marking out land that the possession of the Indians needed concrete written titles derived from the Crown to justify rights thereto; but the truth is that these pueblos had older and more sacred titles. Long before the contest, the Indios existed, possessing in common the lands which they cultivated, returning to their monarch cer-

cially the cattle which go at a distance and without guard; we order that no stock farms shall be granted in sections and places where injury can result, and where injury cannot be avoided, that they shall be far from the pueblos of Indians and their plantations, because for cattle there are distant lands and grass where they may be pastured and grazed without injury, and the justices shall cause the owners of cattle and those interested in the public welfare shall place whatever herdsmen and guards as may be sufficient to avoid damage, and in case that any happens, they shall make satisfaction for it."

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“It has been believed by companies marking out land that the possession of the Indians needed concrete written titles derived from the Crown to justify rights thereto; but the truth is that these pueblos had older and more sacred titles. Long before the contest, the Indios existed, possessing in common the lands which they cultivated, returning to their monarch cer-

tain services and dues. This property increased so that everything which was conceded to the pueblos, according to the Laws of the Indies, whether founded theretofore or reduced, was confirmed by everything which existed in the Code so many times cited. And for this reason a famous juriconsult, to whom I owe especial recognition for scientific assistance, Lic. Prisciliano Diaz Gonzales, stated in a learned work published in 'El Nacional' on November 17, 1885, the following:

“ ‘From that time on there was private property for the Indians. No formal titles were issued to them; the Judge—Commissary looked over the lands, and if they were possessed by Indians, which he determined by verbal evidence, and summarily, he left as their property; the fact being noted in the report which the Commissary made to the government. This appears in Law 18, Title 12 of the R. de Indies, and we can be sure of the practical observance of the law by the instruction of the Viceroy of Peru, Juan Garcia de Mendoza, which Escalona, inserted in his ‘Gazofflacio’ Book 2, Part 2-A, Chapter 18, pages 212 and 213, and by the provisions in Article II of the Royal Cedula of October 15, 1774. Since the Indians had no titles nor any evidence of their property, other than possession verbally recognized by the Commissaries, they could not demand a title issued by the Spanish authorities.’ ”

The Supreme Court of the United States has examined the Laws of the Indies in the case of *Carino v. Insular Government*, 212 U. S., 449, and on page 461 of the opinion is found the statement of this Court:

"Prescription is mentioned again in the royal cedula of October 15, 1774, cited in 3 Philippine, 546: 'Where such possessors shall not be able to produce title deeds it shall be sufficient if they shall show that ancient possession, as a valid title by prescription.' It may be that this means possession from before 1700, but at all events the principle is admitted. As prescription, even against crown lands, was recognized by the laws of Spain, we see no sufficient reason for hesitating to admit that it was recognized in the Philippines in regard to lands over which Spain had only a paper sovereignty."

The comment by Mr. Justice Holmes, who wrote the opinion in this case, upon the rights of people who were, with their property, transferred to a new sovereignty and who were of that class that were not strong enough to assert technical rights, would be applicable in the instant case, from which opinion we quote as follows (p. 459):

"It is reasonable to suppose that the attitude thus assumed by the United States with regard to what was unquestionably its own is also its attitude in deciding what it will claim for its own. The same statute made a bill of rights embodying the safeguards of the Constitution, and, like the Constitution, extends those safeguards to all. It provides that 'No law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.' Sec. 5, in the light of the declaration that we have quoted from it is hard to believe that the United States was

ready to declare in the next breath that 'any person' did not embrace the inhabitants of Benguet, or that it meant by 'property' only that which had become such by ceremonies of which presumably a large part of the inhabitants never had heard, and that it proposed to treat as public lands what they, by native custom and by long association, one of the profoundest factors in human thought, regarded as their own. \* \* \*

(P. 460) "Whatever the law upon these points may be, and we mean to go no further than the necessities of decision demand, every presumption is and ought to be against the government in a case like the present. It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land. Certainly in a case like this if there is doubt or ambiguity in the Spanish law we ought to give the applicant the benefit of the doubt. Whether justice to the natives and the import of the organic act ought not to carry us beyond a subtle examination of ancient texts, or perhaps even beyond the attitude of Spanish law, humane though it was, it is unnecessary to decide. If, in a tacit way, it was assumed that the wild tribes of the Philippines were to be dealt with as the power and inclination of the conqueror might dictate, Congress has not yet sanctioned the same course as the proper one 'for the benefit of the inhabitants thereof.'"

Prescription is mentioned again in the Royal Cedula of October 15, 1754, 3 Phil. Rep., 546:

“Where possessors shall not be able to produce title deeds, it shall be sufficient if they shall show that ancient possession as a valid title by prescription.”

However, the Court of Appeals in this very case was entirely satisfied that petitioner had good and valid title under both the laws of Spain and of Mexico when part of the United States. From this opinion we quote (Rec., 428-9):

“Coming to the case on its merits, the word ‘pueblo,’ as derived from its Spanish origin, is not enveloped in mystery nor is it used or applied in any technical sense. It broadly means a small settlement or gathering of people, and applies equally, whether the settlement be a small collection of Spaniards or Indians. It was created as a result of communal occupation of land for a common purpose, originally occupied by the people through their own volition. A Pueblo could thus be formed without any grant or charter. It means merely a settlement with a steady community. A Pueblo is defined in the Partidas, Law 1, Book 2, Law 5, as follows: ‘A pueblo is the name given to a community of people of every kind of the country where they are gathered together; and if for 10 or 20 years they have badly done anything by way of custom, the laws of the land knowing it, and not objecting, and approving, the pueblo, whatever it is, or the greater part of it, can do that thing, and it must be held and protected by custom.’

"The title of the Indian inhabitants of the pueblo in Mexico has been recognized not only by the Mexican but the Spanish laws, and such recognition rests not necessarily upon title by grant or charter from the Crown, but it may be established and was frequently by prescription. Prescriptive right, as against the Crown, existed and was recognized by the Spanish laws. In *Carino v. Insular Government*, 212 U. S., 449, the court, considering the legality of titles established by prescription against the Spanish Government in the Philippine Islands, said: 'Prescription is mentioned again in the Royal Cedula of October 15, 1754, cited in 3 Phil., 546: Where such possessors shall not be able to produce title deeds it shall be sufficient if they shall show that ancient possession, as a valid title by prescription. It may be that this means possession from before 1700, but in all events the principle is admitted. As prescription, even against Crown lands, was recognized by the laws of Spain, we see no sufficient reason for hesitating to admit that it was recognized in the Philippines, in regard to lands over which Spain had only a paper sovereignty.'

"There can be no question, we think, that prior to the cession under the Gadsden Treaty, the Papago Indians had acquired a title which was subject to recognition by the Government of Mexico."

## IV.

**Property Rights Of Petitioner Under Gadsden Treaty  
And The Treaty Of Guadalupe Hidalgo.**

The property rights of petitioner are to be decided by the treaty known as the Gadsden Treaty (10 Stat. at L., p. 1031), and by the Treaty of Guadalupe Hidalgo (9 Stat. at L., p. 922), as, under the Gadsden Purchase Treaty, all the provisions of the 8th and 9th articles of the Treaty of Guadalupe Hidalgo were to apply to the territory ceded by the Mexican government to the United States (Art. V, 10 Stat. at L., p. 1035). The Court of Appeals has assumed, and properly so, that the provision of said Article IX to the effect that Mexicans of such territory who shall not have preserved the character of citizens of Mexico shall be incorporated into the Union of the United States, with "the enjoyment of all rights of the citizens of the United States, according to the principles of the Constitution," applied to them for the one year's time given for them to elect whether they should remain the citizens of Mexico or become citizens of the United States. The Court of Appeals did not discuss what the rights of these people under the Constitution of the United States might be after the period of one year. We believe that the concluding paragraph of Article VIII, 9 Stat., 922, was intended to apply to the people who became citizens of the United States forever. That paragraph is as follows:

“In the said territories, property of every kind now belonging to Mexicans not established there shall be inviolably respected, the present owners, the heirs of these and all Mexicans who may after acquire said property by contract, shall enjoy, with respect to it, guarantees equally ample as if the same belonged to citizens of the United States.”

If, however, the last-quoted paragraph was not written especially to protect such people in the enjoyment of their property forever, then there is nothing in either of the treaties above referred to on that subject, and we must look to the law of nations for a rule governing their rights.

This Court has very clearly and forcibly decided what their rights would be under the law of nations, and has applied that to the very article under discussion, Article IX of the Treaty of Guadalupe Hidalgo.

In the case of *Newhall v. Sanger*, 92 U. S., 761, we quote from page 763:

“The rights to private property, so far from having been impaired by the change of sovereignty and jurisdiction, were fully secured by the law of nations, as well as by treaty stipulations.”

We might observe, in passing, that it was to such grants as were mentioned in the *Newhall* case, and those referred to by the language of Mr. Justice Davis, who wrote the opinion, that would not be recognized unless they had been recorded prior to September 25, 1853; and we submit that it was not the intention of

the provision of Article VI of the Gadsden Treaty to deny property rights that did not have a basis for title in a paper grant.

Early in the jurisprudence of the United States Mr. Chief Justice Marshall interpreted for this country the rule of the law of nations that would pertain to this case in the following language (bottom star, p. 86):

“It may not be unworthy of remark, that it is very unusual, even in cases of conquest, for the conqueror to do more than to displace his sovereign and assume dominion over the country. The modern usage of nations, which has become law, would be violated; that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged, if private property should be generally confiscated, and private rights annulled. The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other, and their rights of property, remain undisturbed. If this be the modern rule even in cases of conquest, who can doubt its application to the case of an amicable cession of territory? Had Florida changed its sovereign by an act containing no stipulation respecting the property of individuals, the right of property in all those who became subjects or citizens of the new government would have been unaffected by the change. It would have remained the same as under the ancient sovereign.” *U. S. v. Percheman*, 7 Pet., 51.

The Supreme Court, in the case of *Leitensdorfer & Houghton v. Webb*, 20 How., 176, said:

“Upon the acquisition, in the year 1846, by the arms of the United States, of the Territory of New Mexico, the civil government of this Territory having been overthrown, the officer, General Kearney, holding possession for the United States in virtue of the power of conquest and occupancy, and in obedience to the duty of maintaining the security of the inhabitants in their persons and property, ordained, under the sanction and authority of the United States, a provisional or temporary government for the acquired country. By this substitution of a new supremacy, although the former political relations of the inhabitants were dissolved, their private relations, their rights vested under the government of their former allegiance, or those arising from contract or usage, remained in full force and unchanged, except so far as they were in their nature and character found to be in conflict with the Constitution and laws of the United States, or with any regulations which the conquering and occupying authority should ordain. Amongst the consequences which would be necessarily incident to the change of sovereignty, would be the appointment or control of the agents by whom and the modes in which the government of the occupant should be administered—this result being indispensable, in order to secure those objects for which such a government is usually established.

“This is the principle of the law of nations, as expounded by the highest authorities. In the case of *The Fama* in the 5th of Robinson’s Report, page 106, Sir William Scott declares it to be ‘the settled principle of the law of nations, that the inhabitants of a conquered territory change their allegiance, and their relation to

their former sovereign is dissolved; but their relations to each other, and their rights of property not taken from them by the orders of the conqueror, remain undisturbed.' So, too, it is laid down by Vattel, book 3d, Chapter 13, Section 200, that 'the conqueror lays his hands on the possessions of the State, whilst private persons are permitted to retain theirs; they suffer but indirectly by the war, and to them the result is, that they only change masters.' "

See also the case of *U. S. v. Lucero*, 1 N. M., 422.

Chancellor Kent declares that treaties

"are to receive a fair and liberal interpretation according to the intention of the contracting parties, and to be kept with the utmost scrupulous good faith. Their meaning is to be ascertained by the same rules of construction and force of reasoning which apply to the interpretation of private contracts." 1 Kent's Commentaries, 174.

And the court will put a liberal construction upon treaties so as to protect the rights of property:

"Where two constructions may be placed upon a treaty, one restrictive as to the rights that may be claimed under it, and the other liberal, the liberal construction will be preferred." *Hauenstein v. Lynham*, 100 U. S., 483.

The concluding paragraph of the opinion of the Court of Appeals in this case is (Rec., 430):

"The power lies alone in Congress to extend to these people protection similar to that thrown

around the pueblos of New Mexico, who are more fortunate than plaintiff, merely in that they possessed a paper title from Mexico."

We submit that, until Congress does extend to these people the protection they are entitled to under the treaties, it is for the courts to do so.

Congress has confirmed the titles of the Pueblos in New Mexico because paper titles were presented (notwithstanding it is now acknowledged by all persons familiar with the situation that the paper titles presented by Pueblo Indians were rank forgeries, and that neither Spain nor Mexico gave paper titles to the Indians, except possibly in some cases, to additional lands). In the instant case no political question is involved. It is purely a legal question as to what petitioner's rights were under the laws of Spain and Mexico, and the protection by the courts of those rights until Congress shall act in the matter. The laws of Spain and Mexico as to petitioner's rights have been presented in this brief, but the Court will take judicial notice thereof. *U. S. v. Perot*, 98 U. S., 428; *Fremont v. U. S.*, 17 How., 542.

When a treaty can be executed without legislation, the courts will enforce its provisions. *Foster v. Neilson*, 2 Pet., 314; *U. S. v. Arredondo*, 6 Pet., 735. Perhaps this Court might not provide a decree in this case that would result in giving petitioner a paper title. That is not asked in this case. It is asked that petitioner's rights to their property, as recognized by Spain and Mexico, be protected pending action by Congress.

Congress has, to some extent, acted in this matter. By Act of July 22, 1854 (10 U. S. Stat., 308), which, as the Court will see, was subsequent to the Gadsden Purchase, Congress provided, among other things, for a Surveyor General for what was then the Territory of New Mexico, which included the lands involved in this case, and provided that such Surveyor General should receive his instructions from the Secretary of the Interior as to ascertaining the rights of people to property acquired both under the Treaty of Guadalupe Hidalgo and the Gadsden Treaty.

The Secretary of the Interior, through the Commissioner of the General Land Office, by letter dated August 21, 1854, gave explicit instructions as to the procedure of such Surveyor General. This letter throws a flood of light upon the contemporaneous interpretation which the Secretary of the Interior gave to such act of Congress and to such treaties. While this Court will take judicial notice thereof, we have appended the entire letter hereto as an appendix (the italics appearing therein are ours). We doubt if this letter has ever been called to this Court's attention, and, while much of it does not pertain to the Pueblo Indians, we think the Court will find the letter interesting.

Pursuant to said letter, the Surveyor General did come into the then Territory of New Mexico and follow the instructions contained in the letter. He made several reports to Congress, upon which reports titles were either confirmed, rejected, or in some instances not acted upon at all. In his report of August 29, 1861, found in printed documents of 37th Congress,

1861-1862, Ser. 1117, pages 578-582, he reported upon plaintiff, Santa Rosa Pueblo, as follows (Trans. Rec., 435):

"The 8th section of the Act of Congress of 1854, organizing this office, requires the Surveyor General to 'make a report in regard to all the pueblos existing in the Territory, showing the extent and locality of each, stating the number of the inhabitants in the said pueblos, respectively, and the nature of their titles to their lands.' In accordance with this requirement, I append a tabular statement, embodying, as fully as they could be collected, these statistics of the pueblos, which I believe have not heretofore been collected and reported, as required by the law. The statement embraces, I believe, all the pueblos, whether in New Mexico proper or in Arizona. In alluding to the Pueblo Indians, I take occasion to remark that there is considerable complaint among them growing out of intrusions upon their lands by the white citizens of the country.

"In suggesting the necessity of some legal provision for the protection of the rights of these simple-minded but virtuous and faithful people, the Pueblo Indians, I need only, in support of the recommendation, make the following extract from a letter on file in this office from one of the former Pueblo agents: 'The Mexican people have in many instances set up claims to lands clearly within their (the Pueblos') limits—in some instances almost in the center of the pueblos. The consequence is that much ill feeling exists among them. \* \* \* There are others of the Pueblos in the same situation; they complain bitterly of the encroachments of Mexicans upon them.' "

The tabular statement above referred to alludes to Santa Rosa as follows:

“No. 46, Santa Rosa, Papago Pueblo, Arizona, with the following remarks:

“The Papagos inhabit the country between Tucson and the Colorado of the west and between the Gila and the International Boundary line, and are similar in nearly all respects to the Pimas, speaking the same dialect, etc. See Record, page —.”

Congress has never acted further pursuant to this, or any other report that may have been made as to the Papagos. The Court will further observe that the act (Sec. 8, 10 U. S. Stat., 308), especially enjoins any disposition of these lands by Government officials until Congress has further acted. This suit is to enjoin Government officials from acting contrary to the statute, and from disposing of plaintiff's lands, or from administering them as Government lands in any way. We submit that, under the treaty, the property rights of petitioner may not be destroyed by failure of Congress to act, but that the courts may, and should, protect petitioner's rights.

Should Congress act in this matter, it would not be a grant of land to petitioner, but merely a confirmation of the titles held under the laws of Spain and Mexico. *Langdean v. Hanes*, 21 Wall., 521.

Therefore, it is respectfully submitted that the writ of certiorari should be issued as is prayed for in this cause, to the end that the decree of the Court of Ap-

peals of the District of Columbia may be reviewed and reversed by this Honorable Court, with costs against the respondents.

Respectfully submitted,

HUDSON P. HIBBARD,  
LOUIS KLEINDIENST,  
W. C. REID,

*Counsel for Petitioner.*

LEVI H. DAVID,  
*Of Counsel.*

**APPENDIX.**

## GENERAL LAND OFFICE.

AUG. 21, 1854.

William Pelham, Esq.,  
U. S. Surveyor General of New Mexico.

SIR:

The 8th section of the act, approved 22d July, for the establishment of the office of Surveyor General in New Mexico, declares as follows:

“SECTION 8. *And be it further enacted*, that it shall be the duty of the Surveyor General, under such instructions as may be given by the Secretary of the Interior, to ascertain the origin, nature, character and extent of all claims to lands under the laws, usages and customs of Spain and Mexico: And for this purpose may issue notices, summon witnesses, administer oaths, and do and perform all other necessary acts in the premises. He shall make a full report on all such claims as originated before the cession of the territory to the United States by the Treaty of Guadalupe Hildalgo of 1848, denoting the various grades of title, which his decision as to the validity or invalidity of each of the same under the laws, usages and customs of the country before its cession to the United States; and shall also make a report in regard to all pueblos existing in the territory, showing the extent and locality of each, stating the number of inhabitants in the said pueblos, respectively, and the nature of their title to the lands. Such report to be made according to the form which may be prescribed by the Sec-

retary of the Interior; which report shall be laid before Congress for such action thereon as may be deemed just and proper, with a view to confirm *bona fide* grants and give full effect to the treaty of 1848 between the United States and Mexico; and, until the final action of Congress on such claims, all lands shall be reserved from sale or other disposal by the Government, and shall not be subject to the donations granted by the previous provisions of this act."

The duty which this enactment devolves upon the Surveyor General is highly important and responsible. He has it in charge to prepare a faithful report of all the land titles in New Mexico which had their origin before the United States succeeded to the sovereignty of the country, and the law contemplates such a report as will enable Congress to make a just and proper discrimination between such as are *bona fide* and should be confirmed and such as are fraudulent or otherwise destitute of merit and ought to be rejected.

The treaty of 1848 between the United States and Mexico (U. S. Stat. at L., v. 9, p. 922), expressly stipulates in the 8th and 9th articles for the security and protection of private property. The terms there employed in this respect are the same in substance as those used in the treaty of 1803 by which the French Republic ceded the ancient Province of Louisiana to the United States, and consequently in the examination of foreign titles in New Mexico you will have the aid of the enlightened decisions and the principles therein developed of the Supreme Court of the United States upon the titles that were based upon the Treaty of Cessions and the laws of Congress upon the subject.

The security to private property for which the Treaty of Guadalupe Hildalgo stipulates is in accord-

ance with the principles of public law as universally acknowledged by civilized nations.

“The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other, and their rights of property, remain undisturbed.” U. S. *v.* Percheman, 7 Pet. Rep., 51.

In the case of U. S. *v.* Arredondo *et al.*, 6 Pet. Rep., 691, the Supreme Court declares that Congress “have adopted, as the basis of all their acts, the principle that the law of the province in which the land is situated is the law which gives efficacy to the grant, and by which it is to be tested whether it was property at the time the treaties took effect.”

Upon the same basis, Congress has proceeded in the present act of legislation which requires the Surveyor General, under instructions from the Secretary of the Interior, to ascertain the origin, nature, character and extent of all claims to lands “under the laws, usages and customs of Spain and Mexico,” and arm the Surveyor General with power for the purpose by authorizing him to issue notices, summon witnesses, administer oaths, and do and perform all other necessary acts in the premises.”

The private-land titles in New Mexico are derived from the authorities of Old Spain, as well as of Mexico.

Among the “necessary acts” contemplated by the law and required of you, is that you shall:

1. Acquaint yourself with the land system of Spain as applied to her ultramarine possessions, the general features of which are found, modified, of course, by local requirements and usages in the former provinces and dependencies of that monarchy on this continent.

For this purpose you must examine the laws of Spain, the Royal ordinances, Decrees and Regulations

as collected in White's Recompilacion, two volumes. By the acts of Congress approved 26th of May, 1824, 23d May, 1828, and 17th June, 1844 (U. S. Stat. at L., vol. 4, p. 52, ch. 173, p. 284, ch. 70, and vol. 5, p. 676, ch. 95), United States district courts were open for the examination and adjudication of foreign titles. Numerous cases on appeal under these laws, and other cases on writs of error in which actions in ejectment in the courts below had been instituted were brought before the Supreme Court of the United States where the rights of property under inceptive and imperfect titles which originated under the Spanish system have been thoroughly examined and discussed with eminent ability.

For these decisions I refer you to Peters' and Howard's Reports of the Decisions of the Supreme Court of the United States. It is important you should carefully examine them in connection with the Spanish law and the legislation of Congress on the subject, in order that you may understand and be able to apply the principles of the Spanish system as understood and expounded by the authorities of our Government.

Upon your arrival at Santa Fe you will make application to the Governor of the Territory for such of the archives as relate to grants of land by the former authorities of the country.

You will see that they are kept in a place of security from fire or other accidents, and that access is allowed only to land owners who may find it necessary to refer to their title records, and such references must be made under your eye or that of a sworn employee of the Government.

You will proceed at once to arrange and classify the papers in the order of date, and have them properly and substantially bound. You will then have schedules (marked 1), of them made and in duplicate, and will

prepare abstracts, #2, also in duplicate, of all the grants found in the records, showing the names of grantees, dates, area, locality, by whom conceded and under what authority.

You will prepare in duplicate, from the archives or other authoritative sources, a document, #3, exhibiting the names of all the officers of the Territory who held the power of distributing lands from the earliest settlement of the Territory until the change of government, indicating the several periods of their incumbency, the nature and extent of their powers concerning lands, whether and to what extent and under what conditions and limitations, authority existed in the governor, political chiefs, to distribute (*repartie*) the public domain, whether in any class of cases they had the power to make an absolute grant, and, if so, for what maximum in area, or whether subject to the affirmation of the departmental or supreme government, whether the Spanish surveying system was in operation, and since what period in the country and under what organization, also with verified copies in the original and translations of the laws and decrees of the Mexican Republic and regulations which may have been adopted by the general government of that republic for the disposal of the public lands in New Mexico. Herewith you will receive a table of land measures adopted by the Mexican Government, translated from the "*Ordenanzas de Tierras y Aguas*" by Mariano Galvan—edition of 1844, as printed in Ex. Doc. #17, First Session, 31st Congress, House of Representatives, containing much valuable information on the subject of California and New Mexico and of which document I would invite your special and careful examination.

In a report of the 14th November, 1851, from the Surveyor General of California, it is stated that all the

grants, etc., of lots or lands in California made either by the Spanish Government or that of Mexico refer to the "vara" of Mexico as a measure of length; that, by common consent in California, that measure is considered as exactly equivalent to 33 American inches; that officer then enclosed to us copy of a document he had obtained as being an extract of a treaty made by the Mexican Government, from which it would seem that another length is given to the "vara," and by J. H. Alexander's (of Baltimore) Dictionary of Weights and Measures, the Mexican vara is stated to be equal to .92741 of the American yard.

This office, however, has sanctioned the recognition in California of the Mexican vara as being equivalent to 33 American inches.

You will carefully compare the data furnished in the table herewith and in the foregoing with the Spanish measurements in use in New Mexico and will report whether they are identical, or, if varied in any respect by law or usage, you will make a report of all the particulars. You should also add to "Document #3" the *forms* used under the former governments to obtain grants, beginning with the initiatory proceeding, namely, the petition, and indicating the several successive acts until the title was completed. A copy of the "schedule," "abstract" and "documents" required of you in the foregoing, duly authenticated by you, should constitute a part of the permanent files of the Surveyor General's office, and duplicates of them should be sent, as soon as practicable, to the Department of the Interior.

The knowledge and experience you will acquire in arranging the archives, collecting materials and making out the documents called for by these instructions will enable you to enter understandingly upon the work of receiving and examining the testimony which may

be presented to you by land claimants and prepare your reports thereon for the action of Congress.

In the first instance, you will provide yourself with a journal consisting of substantially-bound volume or volumes, which is to constitute a complete record of your official proceedings in regard to land titles, and with a suitable docket for the entry therein of claims in the order of their presentation, and so arranged as to indicate, at a glance, a brief statement of each case, its number, name of original and present claimant, area, locality—from what authority derived, nature of title, whether complete or incomplete, and your decision thereon.

Your first session should be held at Santa Fe, and your subsequent sessions at such places and periods as public convenience may suggest, of which you will give timely notice to the Department.

You will commence your session by giving proper public notice of the same in a newspaper of the largest circulation in the English and Spanish languages, will make known your readiness to receive notices and testimony in support of the land claims of individuals derived before the change of government. You will require claimants in every case, and give public notice to that effect, to file a written notice setting forth the name of the "present claimant," name of the "original claimant," nature of claim, whether inchoate or perfect, its date, from what authorities the original title was derived, with a reference to the evidence of the power and authority under which the granting officer may have acted, quantity claimed, locality, notice and extent of conflicting claims, if any, with a reference to the documentary evidence and testimony relied upon to establish the claim and to show a transfer of right from the "original grantee" to "present claimant."

You will also require of every claimant an authenti-

cated plat of survey, if a survey has been executed, or other evidence, showing the precise locality and extent of the tract claimed. This is indispensable in order to avoid any doubt hereafter in reserving from sale, as contemplated by law, the particular tract or parcel of land for which a claim may be duly filed, or in consummating the title to the same hereafter in the event of a final confirmation.

The effect of this will be not only to save claimants from embarrassments and difficulties inseparable from the presentation and adjudication of claims with indefinite limits, but will promote the welfare of the country generally by furnishing the Surveyor General with evidence of what is claimed as private property under treaty and the Act of 22nd of July, 1854, thus enabling him to ascertain what is undisputed public land and to proceed with the public surveys accordingly without awaiting the final action of Congress upon the subject.

You will take care to guard the public against fraudulent or antedated claims and will bring the title papers to the test of the genuine signatures which you should collect of the granting officers, as well as to the tests of the official registers or abstracts which may exist of the title issued by the granting officers.

In all cases, of course, the original title papers are to be produced, or loss accounted for, and where copies are presented, they must be authenticated, and your report should also state the precise character of the papers acted upon by you, whether original or otherwise. Where the claims may be presented by a party as "present claimant" in right of another, you must be satisfied that the deraignment of title is complete, otherwise the entry and your decision should be in favor of the "legal representative" of the original grantee.

Your journal should be prefaced by a record of the law under which you are required to act and of your commission and oath of office, and should contain a full record of the notice and evidence in support of each claim and of your decision, setting forth as succinctly and concisely as possible all the leading facts, particulars and the principles applicable to the case, and upon which such decision may be founded. All the original papers should, of course, be carefully numbered, filed and preserved, and upon each should be endorsed the volume page of the record in which they are entered, and such reference should be made on the journal and docket as will properly connect them with each other.

Your docket should be a condensed exhibit of every case and your decisions. The claims, both as to grade and dignity, may be classified by numerals or alphabetically, accompanied by explanatory notes—in such a manner that it will show every case confirmed, and every one rejected by you.

In the case of any town lot, farm lot or pasture lot held under a grant from any corporation or town to which lands may be granted for the establishment of a town by the Spanish or Mexican Government, or the lawful authorities thereof, or in the case of any city, town or village lots, which city, town or village existed at the time possession was taken of New Mexico by the authorities of the United States, the claim to the same may be presented by the corporate authorities, or where the land on which the said city, town or village was originally granted to an individual, the claim may be presented by or in the name of such individual, *and the fact being proved to you of the existence of such city, town or village at the period when the U. S. took possession may be considered by you as prima facie evidence of grant to such corporation or to the*

*individuals under whom the lot holders claim*, and where any city, town or village shall be in existence at the passage of the Act of 22d of July, 1854, the claim for the land embraced within the limits of the same may be made and proved up before you by the corporate authorities of the said city, town or village. Such is the principle sanctioned by the Act of 3d of March, 1851, for the adjudication of Spanish and Mexican claims in California, and I think its application to and adoption proper in regard to claims in New Mexico.

In the month of March, 1849, there was published in the Atlantic States an extract of a letter dated December 12th, 1848, at Santa Fe (New Mexico), purporting to be from a young officer of the Army, in which it was stated that "the prefect at El Paso del Norte has, for the last few months, been very active in disposing (for his own benefit) of all lands in that vicinity that are valuable, antedating the title to said purchasers;" that "these land titles" would "be made a source of profitable litigation," etc. It will be your duty to subject all papers under suspicion of fraud to the severest scrutiny and test in order to settle the question of their genuineness.

You will also collect information from authentic sources in reference to the laws of the country respecting minerals and ascertain what conditions were attached to grants embracing mines, whether or not the laws and policies of the former governments conferred absolute title in granting lands of this class in New Mexico.

It is proper, also, and you are instructed, in the case of every claim that may be filed, to ascertain from the parties, and require testimony as to whether the tracts claimed are mineral or agricultural, and you will be careful to make the necessary discrimination in the record of your proceedings and in your docket.

Your report should be divided into two parts.

Part first should embrace individual and municipal claims and should be prepared in the manner contemplated by law and in accordance with the requirements in the foregoing instructions.

The law further requires you also to "make a report in regard to all pueblos existing in the territory, showing the extent and locality of each, stating the number of inhabitants in the said pueblos, respectively, and the nature of their titles to the land."

Part second of your report should be devoted to this branch of your duty.

It will be your business to collect data from the records and other authentic sources relative to these pueblos so that you will enable Congress to understand the matter fully and legislate in such a manner as will do justice to all concerned.

In a report dated July 29, 1849, in camp near Santa Fe, from the Indian Agent, James S. Calhoun, to the Commissioner of Indian Affairs, he says: "The Pueblo Indians, it is believed, are entitled to the early and especial consideration of the Government of the United States. They are the only tribe in perfect amity with the Government, and are an industrious, agricultural and pastoral people living principally in villages ranging north and west of Taos, south on both sides of the Rio Grande more than 250 miles;" that "by a Mexican statute, these people," as he had been informed by Judge Houghton, of Santa Fe, "were constituted citizens of the Republic of Mexico, granting to all of mature age who could read and write, the privilege of voting, but this statute has no practical operation;" that since the occupancy of the territory by the Government of the United States the territorial Legislature of 1847 passed the following act, which, at the date of the Indian agent's report, was in force:

*"Be it enacted by the General Assembly of the Territory of New Mexico:*

"SECTION 1. That the inhabitants within the Territory of New Mexico, known by the name of Pueblo Indians and living in towns or villages built on lands granted to such Indians by the laws of Spain or Mexico, and conceding to such inhabitants certain land and privileges to be used for the common benefit, are severally hereby created and constituted bodies politic and corporate, and shall be known in law by the name of the 'Pueblo,' etc. (naming it), and by that name they and their successors shall have perpetual succession, sue and be sued."

In a subsequent report, namely, of the 4th October, 1849, the same officer, reported from Santa Fe that "The pueblos or civilized towns of Indians of the Territory of New Mexico are the following" [here follows a list of pueblos in New Mexico in 1849, but, as the lands in question were not a part of New Mexico until 1854, the Papagos were, of course, not included, so it is unnecessary to enumerate the New Mexico pueblos]. The above enumeration, it is stated by the officer mentioned, "was taken from census ordered by the Legislature of New Mexico convened December, 1847, which includes only those of five years of age and upwards," and, further, that "these pueblos" are located from 10 to near 100 miles apart, commencing north at Taos and running south to near El Paso some 400 miles or more, and running east and west 200 miles," this statement having no reference to pueblos west of Zunia.

In another despatch, dated the 15th of October, 1849, at Santa Fe, the same agent reports that "These pueblos are built with direct reference to defense, and their houses are from one to six stories high," etc.; that

"the general character of their houses is superior to those of Santa Fe;" they "have rich valleys to cultivate," etc., and they "are a valuable and available people and as firmly fixed in their homes as any one can be in the United States;" that "their lands are held by Spanish and Mexican grants, to what extent is unknown;" that Santa Ana, as Major Weightman had informed the agent, "decreed in 1843 that one born in Mexico was a Mexican citizen, and, as such, is a voter, and, therefore, all the pueblo Indians are voters;" but "that the exercise of this privilege was not known prior to what is termed an election, the last one in this Territory," etc.

*It is obligatory on the Government of the United States to deal with the private-land titles and the "Pueblos" precisely as Mexico would have done had the sovereignty not changed. We are bound to recognize all titles as she would have done. To go that far and no farther. This is the principle which you will bear in mind in acting upon these important concerns.*

You will append to your report on the pueblos the best map of the country that can be procured on a large scale, and will indicate thereon the localities and extent of the several pueblos as illustrative of that report, which you are desired to prepare and transmit to the Department at as early a period as the nature of the duty will allow.

Very respectfully your ob't servant,  
JOHN WILSON,  
*Commissioner.*

DEPARTMENT OF THE INTERIOR.

AUGUST 25, 1854.

The foregoing instructions are hereby approved.

R. McCLELLAND,  
*Secretary.*

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